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September 16, 2002

PETER W. MCGAW
pmcgaw@archernorris.com

Thanne Cox
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Re: Omega Chemical Superfund Site
Whittier, California
OSVOG Settlement Discussions

Dear Ms. Cox:

We enclose for your consideration a copy of correspondence sent by OPOG to the potential new under-50-ton PRPs. Since OPOG has chosen to make its costs public, we feel we can now provide you with more details regarding OSVOG's participation at the site.

First, OSVOG members were part of OPOG through the ninth assessment, which occurred on May 31, 1998. The only assessment in which OSVOG's members did not participate was the tenth assessment, which occurred on January 23, 2001, after we advised EPA that OSVOG's members had been involuntarily expelled from OPOG.

Second, you will see that OPOG is allowing new under-50-ton members to join OPOG for a purely volumetric share of past costs, without any premium.¹ OPOG is also adjusting the volumetric share of each member to reflect the revised total volume, including the volumes of the new PRPs, as we suggested EPA should do. Under this formula, OSVOG's share of actual past cost would be just \$209,000. OSVOG would be entitled to a credit of more than \$125,000, reflecting OSVOG's volumetric share of more than \$3.8 Million of *additional* work.

Finally, you will see that the *total* expenditures by OPOG to date are just \$6.4 million. This figure includes the approximately \$4.4 million spent by OPOG (including OSVOG) under the original UAO that concluded with the entry of the Consent Decree. You will also see that OPOG has spent, at most, just \$2 million on the Phase 1a Work, including reimbursement of EPA's past costs as provided for in the Consent Decree (to which OSVOG also contributed as

¹ Although there is an adjustment for the CPI, reflecting the time that has passed since the actual assessments, this would not apply to OSVOG members, which had already paid their share of these past assessments.

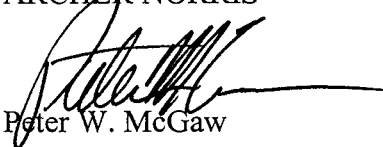
Thanne Cox
September 16, 2002
Page 2

part of the ninth assessment). The Phase 1a Work, by EPA's estimate, is approximately two-thirds complete, suggesting the Phase 1a Work will cost in the neighborhood of \$3 million, just \$1 million more than has been spent so far and far less than EPA's \$15 million estimate. This information would seem to validate OSVOG's position that determination of OSVOG's equitable share should be based on actual costs rather than on estimates.

Please let us know if EPA has any interest in reopening settlement discussions based on this new information. We thank you for your continued courtesies.

Very truly yours,

ARCHER NORRIS

A handwritten signature in black ink, appearing to read "Peter W. McGaw", with a long horizontal line extending to the right.

Peter W. McGaw

PWM:sea

Enclosure

August 30, 2002

OMEGA CHEMICAL SITE

PRP ORGANIZED GROUP

CONFIDENTIAL SETTLEMENT OFFER

**EXPLANATION OF OPOG'S OFFER
TO NEWLY IDENTIFIED 10-50 TON PARTIES**

This document is intended to provide greater detail regarding the offer of the Omega Chemical Site PRP Organized Group ("OPOG") to newly identified parties contributing between 10 and 50 tons of waste to the Omega Chemical Superfund Site. Part I provides an explanation of the offer. Part II provides hypothetical calculations for a party with a 10-ton waste volume and a party with a 50-ton waste volume, respectively.

OPOG is providing this information to you now—before the September 17, 2002 meeting at the Sheraton Gateway Hotel, Los Angeles Airport—so that you will have time to review it and to frame any questions you may have before the meeting. To avoid unnecessary repetition and to better enable OPOG's representatives to respond to questions of general interest, we ask that you transmit to Chuck McLaughlin (cmclaugh@demaximis.com) any questions concerning the offer. We will address questions received at the September 17 session. OPOG representatives will also be available following the September 17 session and again on the morning of September 18 to address additional questions.

I. STRUCTURE OF THE OFFER

OPOG's offer to newly identified parties contributing between 10 and 50 tons of waste to the Omega Site consists of two parts, addressing past costs and future costs, respectively.

Assessment for Past Costs: Each newly identified party will be given a dollar amount reflecting its share of the \$6.4 million past costs (i.e., its share of all past OPOG assessments for the Site). The past cost portion will be calculated as follows:

$$\text{share} = \frac{\text{Newly identified Party's waste volume}}{\text{Adjusted Total Omega Site waste volume}^1}$$

¹ The "Adjusted Total Omega Site waste volume" is a combination of the OPOG members' waste volume and the waste volume attributed to the 104 new PRPs; it does not include waste volumes attributed to the under 10-ton PRPs or the waste volume attributed to recalcitrants who have failed to either join OPOG or settle with EPA.

$$\text{Party's volumetric share} \times \text{past assessments} = \text{Party's dollar share of past assessments}$$

A CPI multiplier will then be applied to account for the time value of money from the date of each assessment to January 15, 2003, the payment due date for newly identified parties. That adjustment is calculated as follows:

$$\text{Party's dollar share} \times \text{CPI multiplier} = \text{CPI adjustment}$$

$$\text{CPI Adjustment} + \text{Party's dollar share} = \text{amount required to settle past costs.}$$

Note that for purposes of the sample calculations, the CPI multiplier is based in part on the July 2002 CPI unit, which is the most recent available; the January 2003 CPI unit will be used to recalculate past costs at the time settlement payments are due. Similarly, the Adjusted Total Omega Site waste volume may change depending on the results of any challenges to the EPA recalculated volumes and/or the addition or deletion of parties to OPOG. Accordingly, the sample calculations are for informative purposes only and are not to be relied on, as the final dollar amounts will change based on these two variables. With this past cost payment, your company will be "even" with OPOG members with respect to Site expenses.

Options for Addressing Future Costs: Newly identified parties contributing between 10 and 50 tons of waste may select one of the following three options for addressing future costs:

Option #1 - Join OPOG: A newly identified party may elect to join OPOG's Work Party B members to "pay as you go" under the Partial Consent Decree and for future regional groundwater costs, if any. Group member allocations will be made in accordance with the existing interim allocation scheme adopted for the Partial Consent Decree. The allocation scheme (e.g., the formula for calculating shares) from the Partial Consent Decree will be adjusted to add in the volumes of new OPOG members but, in all other respects, will be unchanged. Parties that select this option will become signatories to the Omega Chemical Site PRP Group Participation Agreement, a copy of which will be available to any newly identified party that provides OPOG with an executed copy of the Omega Chemical Site Newly Identified Party Confidentiality Statement (the "Confidentiality Statement").

Option #2 - 100% Cash-Out: A newly identified 10 to 50 ton party may elect to pay a 100% premium to cash-out its share of future, unassessed costs under the Partial Consent Decree. A party that selects this option will remain liable for its allocated share of future regional groundwater costs, if any. A party's 100% cash-out amount will be calculated as follows:

$$\text{Party's volumetric share} \times \$14.3 \text{ million} \times \text{CPI multiplier} \times$$

2.

Note: The \$14.3 million figure reflects unassessed Partial Consent Decree costs. The cost of the response actions required by the Partial Consent Decree was estimated in 1999.

to be \$15 million. For this cash-out offer, this amount is reduced by the amount of the CD work that has been already assessed but not yet paid by OPOG: \$6.4 million from OPOG assessments - \$5.7 million (past costs under UAO 95-15 (\$5.3 million) and the Partial Consent Decree (\$400,000)) = a reduction of \$700,000.

Note: A CPI multiplier will be applied from November 1999, the date when cash-out payments were due for the existing Cash-Out Parties, to January 15, 2003, the payment due date for newly identified Cash-Out Parties. The CPI adjustment is necessary to equalize the new 100% Cash-Out Parties under this option with parties identified in 1995 that opted for the 100% Cash-Out two years ago.

Note: The final multiplier accounts for the 100% premium.

Option #3 - 300% Cash-Out: A newly identified 10 to 50 ton party may elect to pay a 300% premium to cash-out its share of future, unassessed costs under the Partial Consent Decree, as well as its allocated share of future regional groundwater costs, if any. The party's 300% cash-out amount will be calculated as follows:

Party's volumetric share x \$14.3 million x CPI multiplier x

4

Note: As with the 100% cash-out option discussed above, the CPI adjustment is necessary to equalize the new 300% Cash-Out Parties under this option with parties identified in 1995 that opted for the 300% Cash-Out two years ago. The final multiplier accounts for the 300% premium.

Under either the 100% or the 300% Cash-Out Agreement, existing OPOG members contributing over 100 tons of waste to the Omega Site (members of the "Work Party A Group") agree to absorb the Cash-Out Parties' allocated waste volume. Funds collected from all new 100% and 300% Cash-Out Parties will be deposited into the Work Party A escrow account for the beneficial use of Work Party A members. The Work Party A members will then pay the 100% and 300% Cash-Out Parties' share of future Site assessments for Partial Consent Decree costs as these assessments are made. Specifically, a settling 100% Cash-Out Party will be added to the Partial Consent Decree and afforded contribution under the CERCLA Statute for past costs and Consent Decree work. A Settling 300% Cash-Out Party will be added to the Partial Consent Decree and afforded contribution protection under the CERCLA statute for past costs and CD work, and future regional groundwater costs, if any, as these assessments are made. The Work Party A members will also indemnify the 300% Cash-Out Parties against any liability for regional groundwater contamination.

A copy of the Omega Chemical Site Under 50 Tons Cash-Out Settlement Agreement, as amended, will be available to any newly identified party that provides OPOG with an executed copy of the enclosed Confidentiality Statement.

II. SAMPLE CALCULATIONS

The examples below are provided to illustrate the past cost payment calculation and the three future cost assessment alternatives under two scenarios (a 10-ton party and a 50-ton party), reflecting the outer ranges of OPOG's settlement offer to parties contributing between 10 and 50 tons of waste to the Omega Site.

A. 10-Ton Party Hypothetical

1. **Past Costs:** A newly identified party that contributed 10 tons of waste would be assessed \$6,024.49 for its share of the \$6.4 million in past OPOG assessments for the Site. See Table A-1, attached, for the sample calculation.

2. Future Costs:

Option 1 - Join OPOG: Future cost assessments will be made on a "pay as you go" basis under the existing allocation scheme as future costs are incurred. A party choosing this option that contributing 10 tons of waste would be allocated approximately 0.08146% of future costs. Note that as with the past cost assessments, this percentage could change as a result of parties successfully challenging the EPA recalculated volumes, and/or additions or deletions to OPOG.

Option 2 - 100% Cash-Out calculation: A party that contributed 10 tons of waste that chooses the 100% cash-out option would be assessed a one-time payment of \$24,929.94. See Table B-1, attached, for the sample calculation. Combining this amount with the party's past cost amount, a 10-ton party opting for the 100% cash-out plan would pay a total of \$30,954.43 to settle its case.

Option 3 - 300% Cash-Out calculation: A party that contributed 10 tons of waste that chooses the 300% cash-out option would be assessed a one-time payment of \$49,859.88. See Table B-2, attached, for the sample calculation. Combining this amount with the party's past cost amount, a 10-ton party opting for the 300% cash-out plan would pay a total of \$55,844.37 to settle its case.

B. 50-Ton Party Hypothetical

1. **Past Costs:** A newly identified party that contributed 50 tons of waste would be assessed \$30,123.93 for its share of the \$6.4 million in past OPOG assessments for the Site. See Table A-2, attached, for the sample calculation.

2. Future Costs:

Option 1 - Join OPOG: Future cost assessments will be made on a "pay as you go" basis under the existing allocation scheme as future costs are incurred. A party choosing this option that contributing 50 tons of waste would be allocated approximately 0.040732% of future costs. Note that as with the past cost assessments, this percentage could

change as a result of parties successfully challenging the EPA recalculated volumes, and/or additions or deletions to OPOG.

Option 2 - 100% Cash-Out calculation: A party that contributed 50 tons of waste that chooses the 100% cash-out option would be assessed a one-time payment of \$124,649.70. See Table B-3, attached, for the sample calculation. Combining this amount with the party's past cost amount, a 50-ton party opting for the 100% cash-out plan would pay a total of \$154,733.63 to settle its case.

Option 3 - 300% Cash-Out calculation: A party that contributed 50 tons of waste that chooses the 300% cash-out option would be assessed a one-time payment of \$249,299.40. See Table B-4, attached, for the sample calculation. Combining this amount with the party's past cost amount, a 50-ton party opting for the 300% cash-out plan would pay a total of \$279,423.33 to settle its case.

TABLE A-1

Past Cost Sample Calculation (10-Ton Party)

	<u>Past Assessment</u>	<u>Date Assessed</u>	<u>CPI Multiplier</u>	<u>Volumetric Share (%)</u>	<u>Dollar Share of Past Assessment(1)</u>	<u>Dollar Share x CPI Multiplier</u>	<u>Past Cost Share Adjusted for Inflation</u>
1.	\$ 52,300	11/21/94	20.3%	0.08146%	\$ 42.60	\$ 8.65	\$ 51.25
2.	\$ 288,741	02/08/95	19.3%	0.08146%	\$ 235.21	\$ 45.40	\$ 280.60
3.	\$ 1,287,162	05/19/95	18.3%	0.08146%	\$ 1,032.23	\$ 188.80	\$ 1,221.13
4.	\$ 2,196,598	08/10/95	17.8%	0.08146%	\$ 1,789.35	\$ 318.50	\$ 2,107.85
5.	\$ 380,551	11/13/95	17.2%	0.08146%	\$ 293.70	\$ 50.52	\$ 344.22
6.	\$ 218,500	03/15/96	15.7%	0.08146%	\$ 177.99	\$ 27.94	\$ 205.93
7.	\$ 67,600	11/30/96	13.5%	0.08146%	\$ 55.07	\$ 7.43	\$ 62.50
8.	\$ 249,999	01/31/97	13.2%	0.08146%	\$ 203.65	\$ 26.88	\$ 230.53
9.	\$ 990,523	05/31/98	10.6%	0.08146%	\$ 808.88	\$ 85.53	\$ 892.41
10.	\$ 750,000	01/23/01	2.8%	0.08146%	\$ 610.95	\$ 17.11	\$ 628.06
Subtotals					\$ 5,247.63	\$ 778.86	\$ 6,024.49
						Total	\$ 6,024.49

1 Volumetric share for a 10-ton party, based on site's total volume waste of 12,275.2 tons, is .08146%.

TABLE A-2

Past Cost Sample Calculation (50-Ton Party)

	<u>Past Assessment</u>	<u>Date Assessed</u>	<u>CPI Multiplier</u>	<u>Volumetric Share (%)</u>	<u>Dollar Share of Past Assessment(1)</u>	<u>Dollar Share x CPI Multiplier</u>	<u>Past Cost Share Adjusted for Inflation</u>
1.	\$ 52,300	11/21/94	20.3%	0.40732%	\$ 213.03	\$ 43.24	\$ 258.27
2.	\$ 288,741	02/08/95	19.3%	0.40732%	\$ 1,176.10	\$ 228.99	\$ 1,403.09
3.	\$ 1,287,162	05/19/95	18.3%	0.40732%	\$ 5,161.40	\$ 944.54	\$ 6,105.94
4.	\$ 2,198,598	08/10/95	17.8%	0.40732%	\$ 8,947.17	\$ 1,592.80	\$ 10,539.77
5.	\$ 360,551	11/13/95	17.2%	0.40732%	\$ 1,468.60	\$ 252.60	\$ 1,721.18
6.	\$ 218,500	03/15/96	15.7%	0.40732%	\$ 889.99	\$ 139.73	\$ 1,029.72
7.	\$ 67,600	11/30/96	13.5%	0.40732%	\$ 275.35	\$ 37.17	\$ 312.52
8.	\$ 249,899	01/31/97	13.2%	0.40732%	\$ 1,018.30	\$ 134.42	\$ 1,152.71
9.	\$ 990,523	05/31/98	10.6%	0.40732%	\$ 4,034.60	\$ 427.67	\$ 4,462.27
10.	\$ 750,000	01/23/01	2.8%	0.40732%	\$ 3,054.90	\$ 85.54	\$ 3,140.44
Subtotals					\$ 26,239.44	\$ 3,884.49	\$ 30,123.93
Total							<u>\$ 30,123.93</u>

1 Volumetric share for a 50-ton party, based on site's total volume waste of 12,275.2 tons, is .40732%.

TABLE B-1

100% Cash-Out Sample Calculation For Future Costs (10-Ton Party)

<u>Volumetric Share by Waste in Tons</u>	x	<u>Future Costs</u>	=	<u>\$ Amount of Future Costs Based on Volumetric Share</u>	x	<u>CPI Multiplier</u>	=	<u>Adjustment for CPI</u>	+	<u>\$ Amount of Future Costs Based on Volumetric Share</u>	=	<u>Dollar Amount Adjusted for CPI</u>	x	<u>100% Premium</u>	=	<u>Future Cost Amount Adjusted for Inflation plus 100% Premium</u>
<u>10</u> 12,275.2		14,305,000		11,649.50		7%		815.47		11,649.50		12,464.97		2		24,929.94

TABLE B-2

300% Cash-Out Sample Calculation For Future Costs (10-Ton Party)

<u>Volumetric Share by Waste in Tons</u>	x	<u>Future Costs</u>	=	<u>\$ Amount of Future Costs Based on Volumetric Share</u>	x	<u>CPI Multiplier</u>	=	<u>Adjustment for CPI</u>	+	<u>\$ Amount of Future Costs Based on Volumetric Share</u>	=	<u>Dollar Amount Adjusted for CPI</u>	x	<u>300% Premium</u>	=	<u>Future Cost Amount Adjusted for Inflation plus 300% Premium</u>
<u>10</u> 12,275.2		14,305,000		11,649.50		7%		815.47		11,649.50		12,464.97		4		49,859.88

TABLE B-3

100% Cash-Out Sample Calculation For Future Costs (50-Ton Party)

<u>Volumetric Share by Waste in Tons</u>	<u>x</u>	<u>Future Costs</u>	<u>=</u>	<u>\$ Amount of Future Costs Based on Volumetric Share</u>	<u>x</u>	<u>CPI Multiplier</u>	<u>=</u>	<u>Adjustment for CPI</u>	<u>+</u>	<u>\$ Amount of Future Costs Based on Volumetric Share</u>	<u>=</u>	<u>Dollar Amount Adjusted for CPI</u>	<u>x</u>	<u>100% Premium</u>	<u>=</u>	<u>Future Cost Amount Adjusted for Inflation plus 100% Premium</u>
<u>50</u> 12,278.2		14,300,000		58,247.62		7%		4,077.33		58,247.62		62,324.95		2		124,649.70

TABLE B-4

300% Cash-Out Sample Calculation For Future Costs (50-Ton Party)

<u>Volumetric Share by Waste in Tons</u>	<u>x</u>	<u>Future Costs</u>	<u>=</u>	<u>\$ Amount of Future Costs Based on Volumetric Share</u>	<u>x</u>	<u>CPI Multiplier</u>	<u>=</u>	<u>Adjustment for CPI</u>	<u>+</u>	<u>\$ Amount of Future Costs Based on Volumetric Share</u>	<u>=</u>	<u>Dollar Amount Adjusted for CPI</u>	<u>x</u>	<u>300% Premium</u>	<u>=</u>	<u>Future Cost Amount Adjusted for Inflation plus 300% Premium</u>
<u>50</u> 12,278.2		14,300,000		58,247.62		7%		4,077.33		58,247.62		62,325		4		249,299.40